State of Rajasthan & Ors. vs. Firm M/s Sohanlal Jain

SB Civil 1st Appeal No.86/1987

Date of Order: 26th February, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.N.Moolchandani for the appellant/s.
Mr.Jitendra Chopra for the respondent/s.

This appeal has been filed by the State of Rajasthan through the Collector, Barmer and others against the respondent firm against the judgment and decree dated 28.05.87 passed by the Additional District & Sessions Judge, Balotra in civil suit No.45/1984 whereby the suit filed by the respondent-plaintiff firm was decreed to the amount of Rs.96,200/- and also for the interest payable @ 12% per annum on the principal amount of Rs.76,900/- from the date of filing of this suit , i.e. 08.10.1984.

The brief controversy involved in this appeal is that the respondent firm was given a contract for transportation of gravel (Moorad) from the mines to the road site in District Barmer where the construction of road was in progress during famine relief work in the

year 1982. The respondent- plaintiff filed this civil suit against the present appellant before the District Judge, Balotra registered vide civil suit No.45-84 wherein the respondent-plaintiff claimed an amount of Rs.96,200/- on the ground that against the contract in question, an amount of Rs. 75,906/- remained outstanding unpaid for the work of transportation of gravel which was denied by the present appellant.

Written statement by the present appellant was filed wherein the appellan,t State of Rajasthan, came out with the case that the respondent- plaintiff transported 40% of less material and in collusion with the officers, bills were prepared and amount was claimed. It was also averred by the present appellant-defendant that in this matter a complaint was also filed to the Anti Corruption Department to inquire the matter.

The learned trial court on the basis of the pleading of the parties to the suit, framed total six issues including the relief and after recording the evidence of both the parities, the learned trial court came to the conclusion that defendant have failed to make the payment of outstanding amount to the plaintiff as claimed by the plaintiff for the transportation of gravel as stated in the suit.

Thereafter the learned trial court, after examining the material on record and law applicable to the case, recorded its finding whereby all the issues were decided against the defendant and in favour of plaintiff and the suit was decreed in favour of the plaintiff vide judgment and decree dated 28.05.87 as referred above.

It is contended by the learned counsel for the appellant that the learned trial court has committed grave error in framing the wrong issues for deciding the controversy. The issues so framed by the learned trial court were not in consonance to the provisions of order 14 (1) (3) CPC. It is also contended by the counsel for the appellant that the learned trial court instead of framing the isues according to the materia,l preposition framed the wrong issues, which were favorable to the plaintiff and , therefore, a prejudice is caused to the appellant-defendant. It is also argued by the counsel for the appellant that the respondent plaintiff has transported 40% gravel material than the quantity shown in the bills for which a complaint was filed to the Anti Corruption Department. Therefore, since the learned trial court did not frame the proper issues as such the impugned judgment and decree under challenge is liable to be set aside.

Per contra, the learned counsel for the respondent-plaintiff contended that the learned trial court has committed no error while deciding the issues which remained unchallenged by the present appellant. It was also contended by the counsel for the respondent that the plaintiff- respondent carried out the transportation work as per the instruction of the appellant-defendant and accordingly after completing the transportation work bills were prepared, which were approved by the competent officers of the appellant department and their action were never challenged by the superior authorities of the appellant department. Therefore, it cannot be said that there was any kind of collusion between plaintiff and the officers of the appellant department. It is also contended by the counsel for the respondent that the present appellant have not placed any material on record by which it could be said that the respondent plaintiff transported 40% less material in transportation work. It is also contended by the counsel for the respondent plaintiff that after the issues were framed by the learned trial court, the appellant-defendant had opportunity to suggest the additional issues as per provisions of Order 14 Rule 5 C.P.C., which they failed to do. The appellant never challenged the framing of issues before the higher court of jurisdiction, hence they are now estopped from raising this issue at this stage. It was also contented that the learned trial court,

after examining the entire material available on record , has recorded its independent and reasoned findings which does not require to be interfered by this Court in this appeal.

I have heard learned counsel for the parties, perused the record of the trial court and material available thereon.

It is undisputed that the respondent -plaintiff was given a contract for transportation of gravel material for construction of Roads and when the payment of outstanding amount was not made to the respondent- plaintiff despite his demand then he filed the civil suit for recovery of the outstanding amount. It is also undisputed fact that the present appellant has not taken any action against those officers of the appellant department who have approved the transportation work and the bills thereto.

The present appellants have not led any evidence to support their contention that the respondent- plaintiff transported 40% less material than the sanctioned. The appellant-defendant also did not produce any trustworthy piece of evidence by which it could be proved that there was any kind of collusion between plaintiff and officers of the appellant department in the transportation of gravel in

question, as no action has been stated to be taken against any of the officers who passed these bills of the respondent-plaintiff. Therefore, the contention of the present appellant is contrary to the material available on record. The contention of the present appellant on the count of framing of issue is also not sustainable on the ground that the present appellant had ample opportunity to approach to the trial court under Order 14 Rule 5 CPC for framing of the proper issues in consonance to the pleading but he present appellant did not challenge the issues so framed by the trial court at the time of framing of issues. Merely because some issues have been burdened to be proved by the one party to the suit, it cannot be presumed or said that the improper issues have been framed. The contention of the counsel for the appellant saying that the plaintiff cannot succeed on the strength of the defence is also not sustainable because whether the evidence is led by the defendant or the plaintiff the trial courts decides the controversy on the basis of material available before it, so as to impart fair justice.

After hearing the submissions of both the parties and after examining the entire material of the trial court below, I am of the considered opinion that while decreeing the suit of the respondent-plaintiff, the learned trial court has recorded reasoned findings and no

error has been committed by the learned trial court by decreeing the suit of the respondent-plaintiff.

Therefore, in view of the above, I do not find any strength in the submissions of the appellant, warranting interference in the judgment and decree under challenge . Hence this first appeal filed by the State lacks the merits as such the same is hereby dismissed summarily. However, the costs are made easy.

(BHAGWATI PRASAD), J.

L.George